

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

DENNIS HOLTZ,

07-CV-237-BR

Plaintiff,

ORDER

v.

CHEVRON STATIONS, INC.,
a Delaware corporation,

Defendant.

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BROWN, Judge.

This matter comes before the Court on Defendant Chevron Stations, Inc.'s Motions to Strike Portions of Plaintiff's Evidence in Support of his Motion for Summary Judgment (#45), Defendant's Motion to Strike Portions of the Declaration of Dennis Holtz (#53), Defendant's Motion to Exclude Expert Testimony (#70), Plaintiff's Motion for Summary Judgment (#23), and Defendant's Motion for Summary Judgment (#30).

This state-law employment action arises from Plaintiff Dennis Holtz's prior employment as assistant manager of Chevron store number 1123 in Beaverton, Oregon, from which Defendant fired him in November 2006. Plaintiff alleges he suffered on-the-job injuries in January, February, and March 2005 and on October 27, 2006. Plaintiff subsequently filed workers' compensation claims related to his injuries. Plaintiff also alleges Defendant fired him because he invoked the protection of Oregon's workers' compensation laws. In response, Defendant asserts it fired Plaintiff because of his repeated failures to comply with company policies regarding proper notice and documentation of workplace injuries. Plaintiff maintains, however, he complied with company policies as he was trained to do.

On January 11, 2007, Plaintiff filed a complaint in Multnomah County Circuit Court and asserted three claims:

(1) workers' compensation discrimination and retaliation under Oregon Revised Statute § 659A.040; (2) disability discrimination under Oregon Revised Statute § 659A.122; and (3) disability retaliation under Oregon Revised Statute § 659A.109. On February 20, 2007, Defendant removed the case to this Court on the basis of diversity jurisdiction pursuant to 28 U.S.C. § 1441(b). In his Memorandum of Law in Support of his Motion for Summary Judgment, Plaintiff noted he agreed by stipulation with Defendant to withdraw, in effect, all of his claims except for his claim for workers' compensation discrimination and retaliation under Oregon Revised Statute § 659A.040 for which he seeks economic, noneconomic, and punitive damages.

Plaintiff and Defendant each filed Motions for Summary Judgment on November 13, 2007. Defendant also filed Motions to Strike on November 27, 2007, and December 5, 2007, and filed its Motion to Exclude Plaintiff's Expert Testimony on December 10, 2007.

The Court scheduled oral argument regarding the parties' Motions for February 1, 2008. After an exhaustive review of the record and the Motions, however, the Court advised the parties that oral argument was unnecessary. The parties agreed the Court should take the matter under advisement on the record. Having completed its consideration of these Motions, the Court rules as follows:

1. The majority of Defendant's numerous hearsay objections are not well-taken. Much of the material Defendant objects to is not hearsay under Federal Rule of Evidence 801 (*i.e.*, admissions of a party-opponent) or qualifies as an exception to the hearsay rule under Rule 803(3) (*i.e.*, Plaintiff's state of mind). Moreover, Defendant's objections regarding the discrepancies between Plaintiff's deposition testimony and the Affidavits submitted in support of his Motion for Summary Judgment are based on differences of degree that go to the weight and credibility of Plaintiff's testimony rather than on the fundamental inconsistencies that require exclusion. The Court, therefore, **DENIES** Defendant's Motion to Strike Portions of Plaintiff's Evidence in Support of his Motion for Summary Judgment and Defendant's Motion to Strike Portions of the Declaration of Dennis Holtz. Defendant may renew its objections to this evidence in its pretrial motions *in limine*.

2. Defendant also objects to the proposed testimony of Plaintiff's legal "expert," Phillip Lebenbaum. Plaintiff offers this testimony as an "exposition of the workings of the [Oregon workers' compensation] statute." The Court notes legal experts are not generally permitted to testify as to legal standards at issue in a case because it is for the Court to determine the law and to instruct the jury accordingly. The Court, therefore, **GRANTS** Defendant's Motion to Exclude Expert Testimony subject to

consideration of the appropriate means of instructing the jury as to the applicable legal standards. The Court also will consider any other proffers as to Mr. Lebenbaum's testimony at the pretrial conference. The Court directs the parties to confer explicitly about the scope of any proposed testimony. Defendant may challenge such testimony in a pretrial motion *in limine*.

3. The Court concludes the record reflects many genuine issues of material fact exist as to, among other things, how Plaintiff was trained relative to Chevron's workplace-injury policy; when Plaintiff understood the "proper" procedure to follow; what, if any, direction Plaintiff received from his manager regarding how to report workplace injuries; and Defendant's motive in terminating Plaintiff. Viewed in the light most favorable to Plaintiff, a reasonable juror could find Defendant's proffered reason for terminating Plaintiff was pretext to avoid a workers' compensation claim by Plaintiff. The Court, therefore, **DENIES** the Motions for Summary Judgment filed by Plaintiff and Defendant.

With respect to Defendant's contention in its Motion for Summary Judgment that the Court should dismiss Plaintiff's claim for punitive damages, the Court concludes Defendant's reliance on *Kolstad v. American Dental Association*, 527 U.S. 526 (1999), is misplaced. In *Kolstad*, the Court describes the standards for a claim of punitive damages under Title VII for intentional

discrimination with malice or reckless disregard for a plaintiff's protected rights under federal law. *Id.* at 529-30. Here, however, Plaintiff pursues only state-law claims. In any event, to the extent Plaintiff alleges facts sufficient to support an allegation of intentional discrimination, there is likely a jury question as to punitive damages. See Or. Rev. Stat. § 659A.885(3). The Court, therefore, also **DENIES** Defendant's Motion for Summary Judgment as to Plaintiff's claim for punitive damages.

In summary, the Court **DENIES** Defendant's Motion to Strike Portions of Plaintiff's Evidence in Support of his Motion for Summary Judgment (#45), **DENIES** Defendant's Motion to Strike Portions of the Declaration of Dennis Holtz (#53), and **GRANTS** Defendant's Motion to Exclude Expert Testimony (#70). The parties have leave to raise these evidentiary issues anew as part of their pretrial motions *in limine*. The Court also **DENIES** Plaintiff's Motion for Summary Judgment (#23) and Defendant's Motion for Summary Judgment (#30).

IT IS SO ORDERED.

DATED this 5th day of February, 2008.

/s/ Anna J. Brown

ANNA J. BROWN
United States District Judge